

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

CLOVIS UNIFIED SCHOOL DISTRICT
et al.,

Plaintiffs and Appellants,

v.

JOHN CHIANG, as State
Controller, etc.,

Defendant and Appellant.

3 Civ. C061696

(Super. Ct. Nos.
06CS00748 & 07CS00263)

ORDER MODIFYING OPINION AND
DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on
September 21, 2010, be modified as follows:

Delete the first paragraph of footnote 5 on pages 22
through 23 of the opinion, which begins "The Controller had
requested" and **replace** it with the following paragraph:

The Controller had requested that, at a minimum,
we stay this appeal in light of the Commission's
pending decision to incorporate the Controller's CSDR
into the Commission's P&G's for the Intradistrict
Attendance and Collective Bargaining Programs, as the
Commission has done for the SDC and EPEPD Programs.
In a subsequent request for judicial notice, the

Controller has now noted that the Commission, on January 29, 2010, amended its P&G's for the Intradistrict Attendance and Collective Bargaining Programs to adopt the CSDR for each program. We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR *during the 1998 to 2003 fiscal years*, when the CSDR was an underground regulation. This issue is not resolved by the Commission's *subsequent* incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P&G's.

This modification does not change the appellate judgment.

With the above modification, the petition for rehearing is denied.

BY THE COURT:

SCOTLAND, Acting P. J.*

NICHOLSON, J.

BUTZ, J.

* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.